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AT&T

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December 8, 2000

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 Twelfth Street, SW, Room TWB-204
Washington, DC 20554

Attn: David Krech, Esq., International Bureau.

Re: Bell Canada Petition for Declaratory Ruling, IB Docket No. 98-148, Public Notice DA 99-2981.

Dear Ms. Salas:

AT&T Corp. ("AT&T") submits this response to the letter filed by Bell Canada in the above-referenced proceeding on November 21, 2000, which claims that AT&T made two "misquotes or mischaracterizations" of CRTC decisions in its March 3, 2000 and October 26, 2000 submissions.[1]

As described below, AT&T quoted accurately from the CRTC forbearance decision and used that quotation appropriately in response to Bell Canada's claims in this proceeding that Canada provides similar competitive safeguards to the United States. Furthermore, while AT&T acknowledges that its October 26, 2000 submission should have made this point more clearly, the facts set forth in *Review of Frozen Contribution Rate Policy*, Telecom Decision 99-20, Dec. 15, 1999 ("CRTC Decision 99-20") show that the CRTC estimates contribution revenues for the 1999-2001 period that exceed the contribution requirement for those years by more than $CAN 540 million. AT&T also notes that Bell Canada engages in the very behavior of which it accuses AT&T when it claims (p. 3) that the CRTC relied on an "original three year forecast" of contribution revenues in its 1999 decision not to adjust contribution rates in Canada -- a claim contradicted by the extract from CRTC Decision 99-20 set forth in Bell Canada's Appendix A. This CRTC decision was not based upon any original forecast of contribution revenues, but rather upon the CRTC's *ex post facto* finding concerning the

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[1] Letter dated Nov. 21, 2000 to Ms. Magalie Roman Salas, Secretary, Federal Communications Commission, from David C. Kidd, Vice President- Regulatory Law, Bell Canada ("Bell Canada Nov. 21 Letter").

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revenues that "could reasonably have been anticipated at the time of Telecom Decision 98-2."

First, Bell Canada complains (p. 1) about AT&T's use of a "selective" quotation in its March 3, 2000 submission that the CRTC "granted Bell Canada and the other former regional monopolies in Canada regulatory forbearance in domestic long-distance services in 1997, notwithstanding . . . 'the absence of ubiquitous, competitor-owned transmission facilities across Canada.'" There is no dispute that AT&T quoted these words accurately from the CRTC's 1997 forbearance decision. Instead, Bell Canada contends (pp. 1-2) that AT&T used them "to leave exactly the opposite impression from the point the CRTC was making with respect to the availability of long-distance facilities" to competitive carriers. It is unclear what "opposite impression" Bell Canada is referring to, since the CRTC made no finding elsewhere in its forbearance decision that ubiquitous, competitor-owned transmission facilities were in fact present in Canada. Rather, the further passage from the forbearance decision quoted in the Bell Canada Nov. 21 letter (p. 3) merely notes that leased facilities were available in Canada from the Stentor companies (the former regional monopolists) in areas where the competitive carriers did not own transmission facilities and that, in the CRTC's view, such a blending of leased and owned facilities was "not inconsistent with workable competition."

As AT&T explained in footnote 6 of its March 3, 2000 submission, "[i]n contrast, AT&T was found non-dominant in the U.S. more than ten years after it had lost control of any bottleneck local termination facilities, with a 60 percent share of the domestic long-distance market, and when facing "intense rivalry" from three other U.S. carriers with nationwide facilities-based networks, dozens of regional facilities-based carriers and several hundred resellers. *See Motion of AT&T Corp. to be Reclassified as a Non-Dominant Carrier*, 11 FCC Rcd. 3271(1995) at ¶¶ 68, 70, 72." (Emphasis added.) Thus, while the CRTC granted Bell Canada and the other former regional monopolists forbearance with no "ubiquitous, competitor-owned transmission facilities across Canada," the FCC found AT&T non-dominant when there were no less than three competitor-owned nationwide networks in the United States.

It was Bell Canada, not AT&T, that placed Canada's regulatory safeguards at issue in this proceeding by claiming in its Reply Comments that (pp. 6-7) "the regulatory regimes on both sides of the border are quite similar in ensuring competitive safeguards for interexchange carriers and competitive LECs" and that (p. 7) "the regulatory regime in Canada effectively precludes Bell Canada from exercising its position in the local market to affect competition adversely in the United States." In partial response to these claims, AT&T submitted the contested sentence on page 5 of its March 3, 2000 submission, which is quoted only in part in Bell Canada's Nov. 21 Letter, and reads in full: "In further contrast [to the approach taken in the U.S.], the Canadian regulator, the CRTC, granted Bell Canada and all the former regional monopolies regulatory forbearance in domestic long-distance services in 1997, notwithstanding their continued control of bottleneck local termination facilities, their 70 percent share of the domestic long-distance market and 'the absence of ubiquitous, competitor-owned

transmission facilities across Canada.'" AT&T's comparison between the two decisions is a proper response to Bell Canada's claims in this proceeding that Canada provides similar competitive safeguards to the U.S., and AT&T's usage of the contested quotation from the CRTC decision to support this point is entirely appropriate.

Second, Bell Canada questions AT&T's statement in its October 26, 2000 submission (p. 7) that "(The CRTC itself estimates excess contribution revenues of $CAN 540 million for the 1999-2001 period.)" Bell Canada contends (p. 3) that "the CRTC estimated contribution revenues to be only 1%, or approximately $25 million, over the original three year forecast, a substantial difference from the figure of $540 million alleged by AT&T." However, the facts set forth in CRTC Decision 99-20 show that the CRTC estimated total contribution revenues for the 1999-2001 period that exceed the contribution requirement for those years by an amount even greater than the $CAN 540 stated by AT&T.

As a threshold matter, Bell Canada omits the preceding sentence at page 7 of AT&T's October 26, 2000 submission, which makes clear that the relevant comparison is between contribution revenues and the contribution requirement. That sentence states: "As the result of the CRTC's 1997 decision to freeze per minute contribution rates for the period 1998-2001 without any adjustment for the subsequent growth in contribution eligible minutes since the introduction of flat-rate long-distance pricing plans in mid-1998, AT&T Canada forecasts excess contribution revenues for the incumbent local carriers during the 1998-2001 rate freeze period of $CAN 730 million above the $2.6 billion contribution requirement."

While AT&T acknowledges that it should have made its next point more clearly, AT&T then sought to make the parenthetical observation that the CRTC itself estimates contribution revenues for the 1999-2001 period that exceed the contribution requirement for those years by $CAN 540 million, which are the facts set forth in CRTC Decision 99-20. Specifically, CRTC Decision 99-20 (¶ 20), in the extract included as Appendix A to the Bell Canada Nov. 21 Letter, states that "the [CRTC] estimates that the contribution revenues over the remaining price cap period [*i.e.*, 1999-2001]. . . would be approximately $2.45 billion." Further, Appendix 2 of CRTC Decision 99-20, which is not included in Appendix A to the Bell Canada Nov. 21 Letter, shows a "Revised contribution requirement" for each former regional monopolist totaling $CAN 623.5 million, which amounts to $CAN 1.87 billion for the three year period 1999-2001. (*See* CRTC Telecom Decision 99-20, Appendix 2 ("Calculation of Contribution effective 1 January 2000") at 1c.) Since the contribution revenues of $CAN 2.45 billion for the 1999-2001 period estimated by the CRTC in Decision 99-20 exceed by $CAN 580 million the $CAN 1.87 billion contribution requirement for those years set forth in that same decision, it is clear that the facts set forth in the CRTC decision demonstrate that the excess contribution revenue is equal to or greater than the $CAN 540 million that AT&T referred to in its October 26, 2000 submission (and is in fact $CAN 40 million higher than that amount).

In fact, Bell Canada mischaracterizes the CRTC's findings in Decision 99-20, by contending (p. 3 (emphasis added)) that the CRTC estimated contribution revenues to be "only 1%, or approximately $25 million, over the original three year forecast." The extract from Decision 99-20 at Bell Canada's Appendix A makes clear that the CRTC did not base that finding upon any original forecast of contribution revenues. Instead, the CRTC determined in Decision 99-20 (¶ 22) that there was "no need to adjust domestic contribution rates" by finding (*id.*, ¶ 20) that the estimated contribution revenues of $CAN 2.45 billion would be "approximately 1% over the level that would have been expected at the time of Decision 98-2," and (*id.*, ¶ 21) would "not be significantly in excess of what could reasonably have been anticipated at the time of Decision 98-2." Therefore, the CRTC compared a current estimate of contribution revenues for the period 1999-2001 with its view of the level of such revenue that could have been expected at the time of CRTC Decision 98-2[2] from the use of pre-1998 minute growth rates. (*See* CRTC Decision 99-20, ¶ 12). In sum, rather than compare its estimated contribution revenues with "the original three year forecast," as stated by Bell Canada, the CRTC in fact compared those estimated revenues with its *ex post facto* December 1999 view of the future revenues it would have forecast if it had engaged in such an exercise in March 1998.

In any event, as AT&T has shown in its prior submissions, Bell Canada should remain subject to the Commission's dominant carrier and No Special Concessions rules because it unquestionably possesses market power at the foreign end of the U.S.-Canada route by virtue of its control of virtually the entire local access market in six Canadian provinces. The Commission made clear last year in the *ISP Reform Order* that continued anticompetitive safeguards are necessary to prevent the abuse of foreign market power on routes like the U.S.-Canada route where the International Settlements Policy is removed because carriers like Bell Canada with market power at the foreign end of these routes may still harm U.S. competition by discriminating among unaffiliated U.S. carriers or in favor of their own U.S. affiliates. Bell Canada's petition should accordingly be denied.

Respectfully submitted,

James J. R. Talbot /ha

cc: Rebecca Arbogast
Jeffrey Anspacher
Gregory Staple, Counsel to Bell Canada.

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[2] *Implementation of Price Cap Regulation and Related Issues*, Telecom Decision 98-2, Mar. 5, 1998 ("CRTC Decision 98-2").